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M E M O R A N D U M

TO: Candidates for Statewide Office and Treasurers;
State, Ward, Town and City Committees

FROM: Mary F. McTigue, Director *MFM*

SUBJECT: Purchases by Statewide Candidates from Political
Committees of a Political Party

DATE: July 1, 1994

It has come to the attention of this office that OCPF's policy regarding certain restrictions on expenditures by political committees organized on behalf of statewide candidates needs to be revised.

Section 6 of Chapter 55 prohibits "contributions" by political committees organized on behalf of candidates for the offices of governor, lieutenant governor, attorney general, state secretary, treasurer and receiver general, or auditor ("statewide candidates") to any political committee. The definition of "contribution" contained in section 1 includes any "transfer of money or anything of value between political committees . . . provided, however, that a transfer of funds or payments by a depository candidate¹ or his committee to the political committee of a party, for goods or services provided to a candidate or his committee by such political party shall not be considered to be a contribution." (Emphasis added).

In the past, this office has advised candidates for statewide office that the proviso in the definition of "contribution" explicitly allowing transfers of funds to "the political committee of a party" only allowed such transfers to be made to the state party committee. The office interpreted

1. "Depository candidates" include all statewide candidates, but also include candidates for county office and Governor's Council. See M.G.L. c. 55, s. 19.

transfers by statewide candidates to ward, town, and city committees organized by political parties to be outside the scope of transfers permitted by section 6. However, reviewing the language in section 6 in light of recent court decisions and legislation², the office has concluded that interpreting the law to include an absolute prohibition on a transfer from statewide candidates' committees to ward, town, and city party committees is unduly restrictive.

Specifically, in Weld for Governor v. Director of OCPF, 407 Mass. 761, 556 N.E. 2d 21 (1990), the Supreme Judicial Court indicated that not all transfers between political committees should be considered "contributions." The court stated that a transfer is a "contribution" only if it is made for the purpose of influencing the nomination or election of the recipient. Weld, 556 N.E. 2d at 27. Conversely, a transfer is an "expenditure" if made for the purpose of influencing the nomination or election of the donor.

In conclusion, if a payment is made to a party's political committee it will be considered a "contribution" only if it is given with the intention that it be used to promote the agenda of the recipient party committee. However, a transfer of funds is not a "contribution" subject to the limitations of section 6 if it is merely a payment for goods or services provided by the party committee. Therefore, a statewide candidate committee may make expenditures for goods and services to any political committee of a political party (ward, town, city, or state committees) effective as of the date of this memorandum.

For further information and/or guidance with respect to this memorandum, please contact OCPF.

2. St. 1994, c. 43, s. 23 amends section 6 by providing that statewide candidates committees may contribute to "a political committee of a political party" subject to certain aggregate calendar year limitations. This language is consistent with the interpretation set forth in this memorandum, i.e. that section 6 reflects an intent to include all political committees of a political party, not simply those committees organized on the state level, in section 1's proviso specifying that such transfers are not "contributions."